

86-00074
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DEC 6 1985

Honorable George W. Edgar, Clerk
District Court of Alabama
P. O. Box 829
Mobile, Alabama 36601

Courts - Magistrates - Worthless
Checks - District Attorneys -
Warrants.

Magistrate's duties in connection
with district attorney's worthless
check unit (§12-17-224, Code of
Alabama 1975, 1984 Cumulative
Supplement) discussed.

Dear Sir:

I have your request for an opinion dated September 12,
1985, as follows:

"The District Attorney's Office of Mobile County is in the process of establishing a worthless check unit as authorized by Title 12-17-224, Code of Alabama (1984 Cum. Supp.). The effective operation of this unit will necessarily depend on the cooperation of the District Attorney's office and the District Court. As district court clerk for Mobile County, my primary concern is the procedure which should be utilized by magistrates of the district court in issuing arrest warrants. Because the District Attorney's Worthless Check Unit is located approximately 15-20 minutes away from the district court, there are additional problems in implementing a worthless check unit in our county.

"To assure that the magistrates of the district court strictly comply with the law, I respectfully request an Attorney General's opinion addressing the following questions:

- "1. May a magistrate who is appointed to serve the District Court and who is under the supervision of the District Court Clerk, be placed in the District Attorney's office to receive complaints and issue warrants without violating the Constitution mandate that magistrates remain neutral and detached from law enforcement?
- "2. Assuming your answer to question number 1 is in the affirmative, would a magistrate located in the District Attorney's office be considered neutral and detached if she received compensation for her services from the District Attorney's Worthless Check Unit Fund or from the County General Fund?
- "3. Does Title 12-17-224(b) which provides that a warrant of arrest may be issued and held by the Worthless Check Unit supersede Code section 15-7-4 which states that warrants must be directed to any lawful officer of the state and executed "forthwith"?
- "4. Is a magistrate or judge required to issue a warrant of arrest immediately upon the finding of probable cause pursuant to Title 15-7-3, Code of Alabama 1975?
- "5. If your answer to the above question is in the affirmative, may the warrant be delivered to the District Attorney's Worthless Check Unit unsigned and without an issuance date, with this information supplied after notification efforts have failed?
- "6. If the answer to number 4 is in the negative, is there a certain time limit within which a warrant of arrest must issue?

"In regard to Questions 4, 5 and 6, your office should be aware of the practical problems which confront Mobile district court magistrates. First, most complaints will be settled if the notice provisions of Title 12-17-224 are complied with by the District Attorney's Worthless Check Unit. It therefore would appear to be a wasted expenditure of the magistrate's

time to issue a warrant in all cases before efforts to notify the defendant have been exhausted. In addition, once the warrant is issued and signed there is the very real possibility that such warrants may be executed by mistake after the defendant has voluntarily surrendered himself to the Worthless Check Unit.

- "7. If a warrant of arrest may be issued at a subsequent date, would the complainant be required to come back to the magistrate's office for any reason prior to execution? You may assume that a properly signed and verified complaint is already on file with the magistrate.
- "8. At least one circuit allows the assistant district attorney to secure a warrant of arrest after notification procedures have been exhausted by filing a complaint with the magistrate listing himself as the complainant and the victim as a witness. If this procedure legal?
- "9. Is a separate "deposition" required pursuant to Title 15-7-2 in addition to the complaint signed by the affiant? See Brandies v. State, 44 Ala. App. 648, 219 So. 2d 404 (1968) interpreting the term "deposition" in Title 15-5-4 as embracing all evidence verified by oath, including affidavits. In Brandies the Court of Appeals held that the word "deposition" was intended by the legislature to be synonymous with the term "affidavit" (now referred to as a "complaint" under Temporary Rule 15, ARCrP). "

Answering your questions numbered one and two: it is my opinion that if you as District Court Clerk decide to place a magistrate in the office of the District Attorney for the convenience of receiving complaints and issuing warrants of arrest in worthless check cases the mere fact that such magistrate would perform his duties in this office would not keep such magistrate from being neutral and detached as required. Rennow v. State, 255 So.2d 602, (Ala. App. 1971) citing Johnson v. U.S. 333 U.S. 10 and Coolidge v. New Hampshire, 403 U.S. 443. The place where the magistrate performs his duty in deciding probable cause would not, in my opinion, influence his judgment.

If, however, the magistrate is paid from the District Attorney's Worthless Check Unit Fund which fund increases as more warrants are issued, or that part of the County General Fund containing part of the fees derived in worthless check cases, then in my opinion this fact would render the magistrate not detached and neutral as required in that he would have an interest in the solvency of the fund.

Answering question numbered three: in my opinion Section 12-17-224(b) authorizing the worthless check unit to hold or defer the execution of a warrant of arrest does not supersede Section 15-7-4, Code of Alabama 1975 where the form of the warrant commands the officer to "forthwith arrest" defendant.

Apparently the legislature saw fit to provide a method whereby a warrant of arrest was deferred or delayed in its execution in order to provide an efficient means to cause the defendant to pay for a worthless instrument. Such delay or deferrment does not cancel the warrant but delays its execution until a more appropriate time. If defendant does not proceed to make provision for payment of the worthless instrument the warrant may then be executed forthwith. Both statutes may be given a reasonable field of operation.

Answering your questions numbered 4, 5, and 6: A magistrate (or judge) should issue a warrant of arrest within a reasonably brief time after he has determined from the testimony and evidence before him that the offense has been committed and there is reasonable ground (probable cause) to believe that defendant committed the offense. There is no certain time period within which a warrant must issue. Of course, the magistrate must examine the complainant and any other witnesses under oath. Section 15-7-2, 3, Code of Alabama 1975.

In my opinion this warrant instead of being delivered to an officer for execution may be delivered to the District Attorney's Worthless Check Unit in cooperation with this method of enforcement and for the purpose of deferring further prosecution until chances for payment or restitution have been exhausted. Section 12-17-224, Code of Alabama 1975, 1984 Cumulative Supplement.

Such warrant of arrest should not, in my opinion, be delivered to the District Attorney unsigned or not dated. If this were done the paper, unsigned, would not be a warrant of arrest and would indicate no finding of probable cause.

Answering questions numbered 7,8 and 9: I have previously stated that the warrant may be issued (signed and delivered) within a reasonably brief time after the magistrate has determined from the evidence and testimony before him that an offense has been committed and there is reasonable ground (probable cause) to believe that the defendant committed the offense. This excludes the idea that the warrant may be legally issued at subsequent date.

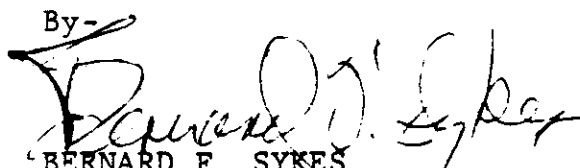
The District Attorney or his assistant should not begin a prosecution on his own complaint or affidavit unless such affidavit is upon his personal knowledge of the commission of the offense. Otherwise such conduct is an offense. Section 12-17-194, Code of Alabama 1975.

If the affidavit or complaint is sufficient and complete itself and not merely conclusionary there need be no additional depositions to support a warrant. Brandies v. State, 44 Ala. App. 648, 219 So. 2d 404 citing Edmunds, State ex rel Dedge, 199 Ala. 555, 74 So. 965 and Porch v. State, 38 Ala. App. 565, 89 So.2d 694. If the affidavit or complaint is merely "bare bones" or conclusionary other sworn testimony must be shown to have been made known to the magistrate else the warrant is void. Crittenden v. State, 4 Div. 180, Alabama Court of Criminal Appeals, 11-29-83 remanded; reversal affirmed, 84-494 Ala. Supreme Court 8-30-85.

Very truly yours,

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ATTORNEY GENERAL

By-


BERNARD F. SYKES
ASSISTANT ATTORNEY GENERAL